

Thomas Jefferson to George Washington, July 15, 1790, with Copy, from Thomas Jefferson and the National Capital. Edited by Saul K. Padover.

Jefferson to Washington

Th: Jefferson begs pardon of the President for being later in sending the inclosed than he had given him reason to expect. the sole cause has been that the act of copying took him longer than he had calculated, he will have the honor of waiting on the President to answer to any thing which he may have omitted materially in these papers.

July 15. 1790.

[Ms., *Records of the Department of State, Miscellaneous Letters*, June-July 1790, in the National Archives.]

Thursday July 15. 1790.

Sir

I have formed an opinion, quite satisfactory to myself, that the adjournment of Congress may be by law, as well as by resolution, without touching the constitution. I am now copying fair what I had written yesterday on the subject & will have the honor of laying it before you by ten oclock.—the address to the President contains a very full digest of all the arguments urged against the bill on the point of unconstitutionality on the floor of Congress. it was fully combated on that ground, in the committee of the whole, & on the third reading, the majority (a Southern one) overruled the objection, as a majority (a Northern one) had overruled the same objection the last session on the Susquehanna residence bill, so that two majorities, in two different sessions, & from different ends of

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the Union have overruled the objection, and may be fairly supposed to have declared the sense of the whole union. I shall not lose a moment in laying before you my thoughts on the subject. I have the honor to be with the most respectful esteem

Sir your most obedient & most humble servt Th: Jefferson

THE PRESIDENT OF THE UNITED STATES

[Ms., *Records of the Department of State, Miscellaneous Letters*, June–July, 1790, in *The National Archives*; pp. 204–5, Ford, *WRITINGS*, V.]

A Bill having passed the two houses of Congress, & being now before the President, declaring that the seat of the federal government shall be transferred to the Patowmac in the year 1790, that the session of Congress next ensuing the present shall be held at Philadelphia, to which place the offices shall be transferred before the 1st. of December next, a writer in a public paper of July 13. has urged on the consideration of the President that the constitution has given to the two houses of Congress the exclusive right to adjourn themselves, that the will of the President mixed with theirs in a decision of this kind would be an inoperative ingredient, repugnant to the constitution, and that he ought not to permit them to part, in a single instance, with their constitutional rights: consequently that he ought to negative the bill.

That is now to be considered.

Every man, & every body of men on earth, possesses the right of self-government: they recieve it with their being from the hand of nature, individuals exercise it by their single will: collections of men by that of their majority; for the law of the *majority* is the natural law of every society of men. when a certain description of men are to transact together a particular business, the times & places of their meeting & separating depend on their own will; they make a part of the natural right of self-government, this, like all other natural rights, may be abridged or modified in it's exercise, by their own consent, or by the law of

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those who depute them, if they meet in the right of others: but—so far as it is not abridged or modified, they retain it as a natural right, & may exercise it in what form they please, either exclusively by themselves, or in association with others, or by others altogether, as they shall agree.

Each house of Congress possesses this natural right of governing itself, & consequently of fixing it's own times & places of meeting, so far as it has not been abridged by the law of those who employ them, that is to say, by the Constitution. this act manifestly considers them as possessing this right of course, & therefore has no where given it to them. in the several different passages where it touches this right, it treats it as an existing thing, not as one called into existence by them. to evince this, every passage of the constitution shall be quoted, where the right of adjournment is touched; & it will be seen that no one of them pretends to give that right; that on the contrary every one is evidently introduced either to enlarge the right where it would be too narrow, to restrain it where, in it's natural & full exercise, it might be too large & lead to inconvenience, to defend it from the latitude of it's own phrases, where these were not meant to comprehend it, or to provide for it's exercise by others where they cannot exercise it themselves.

‘A majority of each house shall constitute a quorum to do business; but a *smaller number* may adjourn from day to day, & may be authorised to compel the attendance of absent members.’ Art. 1, sect. 5. a majority of every collection of men being naturally necessary to constitute it's will, and it being frequently to happen that a majority is not assembled, it was necessary to enlarge the natural right, by giving to ‘a *smaller number* than a majority’ a right to compel the attendance of the absent members, & in the mean time to adjourn from day to day. this clause then does not pretend to give to a majority a right which it knew that majority would have of themselves, but to a number *less than a majority* a right which it knew that lesser number would not have of themselves.

‘Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses

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shall be sitting.' *ibid.* each house exercising separately it's natural right to meet when and where it should think best, it might happen that the two houses would separate either in time or place, which would be inconvenient, it was necessary therefore to keep them together by restraining their natural right of deciding on separate times & places, & by requiring a concurrence of will.

But as it might happen that obstinacy, or a difference of object might prevent this concurrence, it goes on to take from them, in that instance, the right of adjournment altogether, & to transfer it to another, by declaring Art. 2. sect. 3. that 'in case of disagreement between the two houses with respect to the time of adjournment the President may adjourn them to such time as he shall think proper.'

These clauses then do not import a gift, to the two houses, of a general right of adjournment, which it was known they would have without that gift, but to restrain or abrogate the right it was known they would have, in an instance where, exercised in it's full extent, it might lead to inconvenience, & to give that right to another who would not naturally have had it. it also gives to the President a right, which he otherwise would not have had, 'to convene both houses, or either of them, on extraordinary occasions.' thus substituting the will of another, where they are not in a situation to exercise their own.

'Every order, resolution, or vote, to which the concurrence of the Senate & house of representatives may be necessary (except on a question of adjournment) shall be presented to the President for his approbation &c.' Art. 1, sect. 7. the latitude of the general words here used would have subjected the natural right of adjournment of the two houses to the will of the President, which was not intended, they therefore expressly 'except questions of adjournment' out of their operation, they do not here give a right of adjournment, which it was known would exist without their gift; but they defend the existing right against the latitude of their own phrases, in a case where there was no good reason to abridge it. the exception admits they will have the right of adjournment, without pointing out the source from which they will derive it.

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These are all the passages of the constitution (one only excepted which shall be presently cited) where the right of adjournment is touched: & it is evident that none of these are introduced to give that right; but every one supposes it to be existing, and provides some specific modification for cases where either a defect in the natural right, or a too full use of it would occasion inconvenience.

The right of adjournment then is not given by the constitution; & consequently it may be modified by law, without interfering with that instrument, it is a natural right, &, like all other natural rights, may be abridged or regulated in its exercise by law; & the concurrence of the third branch in any law regulating its exercise is so efficient an ingredient in that law, that the right cannot be otherwise exercised, but after a repeal by a new law. The express terms of the constitution itself shew that this right may be modified *by law*, when, in Art. 1. sect. 4. (the only remaining passage on the subject not yet quoted) it says 'the Congress shall assemble at least once in every year, & such meeting shall be on the 1st. Monday in December, unless they shall, *by law*, appoint a different day.' then another day may be appointed, *by law*; & the President's assent is an efficient ingredient in that law. nay further, they cannot adjourn over the 1st. Monday of December but by a *law*. this is another constitutional abridgment of their natural right of adjournment; and completing our review of all the clauses in the constitution which touch that right, authorises us to say no part of that instrument gives it; and that the houses hold it, not from the constitution, but from nature.

A consequence of this is that the houses may by a joint resolution remove themselves from place to place; because it is a part of their right of self-government: but that as the right of self-government does not comprehend the government of others, the two houses cannot, by a joint resolution of their majorities only, remove the executive, & judiciary from place to place. these branches possessing also the rights of self-government from nature, cannot be controuled in the exercise of them, but by a law, passed in the forms of the constitution, the clause of the bill in question therefore was necessary to be put into

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the form of a law, & to be submitted to the President, so far as it proposes to effect the removal of the Executive & Judiciary to Philadelphia. so far as respects the removal of the present houses of legislation thither, it was not necessary to be submitted to the president: but such a submission is not repugnant to the constitution, on the contrary, if he concurs, it will so far fix the next session of Congress at Philadelphia, that it cannot be changed but by a regular law.

The sense of Congress itself is always respectable authority. it has been given very remarkeably on the present subject, the address to the President in the paper of the 13th. is a complete digest of all the arguments urged on the floor of the Representatives against the constitutionality of the bill now before the President; & they were overruled by a majority of that house, comprehending the delegations of all the states South of the Hudson, except South Carolina. At the last session of Congress, when the bill for remaining a certain term at New York, & then removing to Susquehanna or Germantown was objected to on the same ground, the objection was overruled by a majority, comprehending the delegations of the Northern half of the union with that of South Carolina. so that the sense of every state in the union has been expressed, by its delegation, against this objection, South Carolina excepted, and excepting also Rhode island which has never yet had had a delegation in place to vote on the question. In both these instances the Senate concurred with the majority of the Representatives. The sense of the two houses is stronger authority in this case, as it is given against their own supposed privilege.

It would be as tedious, as it is unnecessary, to take up & discuss one by one, the objections proposed in the paper of July 13. every one of them is founded on the supposition that the two houses hold their right of adjournment from the constitution. this error being corrected, the objections founded on it fall of themselves.

It would also be a work of mere supererogation to shew that, granting what this writer takes for granted (that the President's assent would be an inoperative ingredient, because

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excluded by the constitution, as he says) yet the particular views of the writer would be frustrated, for on every hypothesis of what the President may do, Congress must go to Philadelphia. 1. if he assents to the bill, that assent makes good law of the part relative to the Patowmac, and the part for holding the next session at Philadelphia is good, either as an ordinance, or a vote of the two houses, containing a compleat declaration of their will, in a case where it is competent to the object, so that they must go to Philadelphia in that case. 2. if he dissents from the bill, it annuls the part relative to the Patowmac; but as to the clause for adjourning to Philadelphia, his dissent being as inefficient as his assent, it remains a good ordinance, or vote, of the two houses for going thither, & consequently they must go in this case also. 3. if the President withholds his will out of the bill altogether, by a ten days silence, then the part relative to the Patowmac becomes a good law without his will, & that relative to Philadelphia is good also, either as a law, or an ordinance, or a vote of the two houses, & consequently in this case also they go to Philadelphia.

Th: Jefferson

July. 15. 1790.

[Ms., *Records of the Department of State, Miscellaneous Letters*, June–July 1790, in *The National Archives*; pp. 205–210, Ford, *WRITINGS*, V.]